

New Jersey Office of the Attorney General

DIVISION OF CONSUMER AFFAIRS ORTHOTICS AND PROSTHETICS BOARD OF EXAMINERS PUBLIC SESSION MINUTES October 22, 2015

The meeting of the New Jersey State Orthotics and Prosthetics Board of Examiners was held on October 22, 2015, at the State Office Building at 124 Halsey Street, Newark, NJ. The meeting was convened in accordance with the Open Public Meetings Act with previous notification having been sent to the Secretary of State and the following publications: The Record in Bergen County, The Star Ledger, Camden Courier Post, Trenton Times, Aisling Swift Press of Atlantic City and Asbury Park Press. The schedule of this meeting has also been posted on the bulletin at the New Jersey State Orthotics and Prosthetics Board of Examiners Office and under the Board's website. The meeting was called to order by Heikki Uustal, M.D. (Chair) at 10: 22 A.M.

OPENING STATEMENT - Reading of "The Sunshine Law"

PRESENT: Board Members: Heikki Uustal, M.D. (Chair)
Mildred E. Carlascio, LCO, (Vice Chair) and
Louis J. Haberman, CPO/LPO

ALSO PRESENT: Deputy Attorney General Swang Oo,
and Executive Director Laura L. Anderson

Public Attendance: Ulrich Froehlich, from OrthoCare Solutions

I. MINUTES: June 11, 2015 Public Session Minutes Approval

THE BOARD, UPON MOTION MADE BY LOUIS J. HABERMAN AND SECONDED BY MILDREDE E. CARLASCIO, ACCEPTED THE JUNE 11, 2015 PUBLIC SESSION MINUTES AS PRESENTED.

II. PUBLIC PARTICIPATION:

Based on the questions raised by Mr. Ulrich Froehlich, the Board reiterated that the scope of practice of a licensed orthotist shall include patient evaluation for, and the measuring, designing, constructing, assembling, fitting, adjusting and servicing of, orthotic appliances or orthoses, which are prescribed by a licensed physician, podiatrist or dentist for the correction or alleviation of musculoskeletal diseases, injuries or deformities. N.J.A.C. 13:44H-2.1(a).

Further, the Board determined that any off-the-shelf brace or support device that may be built of rigid material as permitted by a prescription for the purpose of correction or alleviation of musculoskeletal diseases, injuries or deformities and requiring adjustments should be performed by a licensed orthotist unless exempted by N.J.S.A. 45:12B-18.

Regarding the activities and services performed by certified pedorthists which are limited to the ankle and below, the Board recognized that these individuals are permitted to practice in New Jersey without a New Jersey license. Licensing of Pedorthists is voluntary in New Jersey N.J.S.A. 45:12B-18.

Regarding the activities and services of fitters to fit appliance or orthosis, the Board stated that New Jersey does not recognize the activities or services of fitters and such activities are subsumed in the scope of practice of a licensed orthotist.

UPON THE MOTION MADE BY LOUIS J. HABERMAN AND SECONDED BY HEIKKI UUSTAL, THE BOARD DETERMINED THAT A LETTER BE SENT TO MR. FROEHLICH AS STATED ABOVE.

Mildred E. Carlascio abstained.

III. REGULATIONS:

Charles Manning, Regulatory Analyst

Scope of orthotist practice

13:44H-3.6 Supervision of an orthotist assistant, prosthetist assistant, prosthetist-orthotist assistant, student or holder of a temporary license

THE BOARD, UPON THE MOTION MADE BY LOUIS J. HABERMAN AND SECONDED BY MILDRED E. CARLASCIO, UPON DISCUSSION OF THE SCOPE OF PRACTICE OF LICENSED ASSISTANT, THE BOARD PROPOSES TO AMEND N.J.A.C. 13:44H-3.6(G) TO REMOVE REFERENCE TO ASSISTANTS AT THE INITIAL EVALUATION OF A PATIENT AND FINAL PROVISION OF AN APPLIANCE AS NOT WITHIN THE SCOPE OF PRACTICE OF LICENSED ASSISTANTS.

IV. NEW BUSINESS - Correspondence received from:

1. American Home Medical, Inc.
RE: Licensing requirements for mail order DME

The Board reviewed a letter submitted by American Home Medical, Inc., a mail order DME company based in Florida, inquiring whether a license is required to provide off-the-shelf (prefabricated) orthotics to patients in this State.

THE BOARD, UPON THE MOTION MADE BY LOUIS J. HABERMAN AND SECONDED BY MILDRED E. CARLASCIO, DIRECTED THAT A LETTER TO BE SENT TO AMERICAN HOME MEDICAL, INC., STATING THAT THE BOARD DOES NOT HAVE JURISDICTION OVER INDIVIDUALS AND/OR COMPANIES OUT OF THIS STATE, HOWEVER, IN ORDER TO PROVIDE PREFABRICATED ORTHOSES WHICH ARE PRESCRIBED BY A LICENSED PHYSICIAN, PODIATRIST OR DENTIST FOR THE CORRECTION OR ALLEVIATION OF MUSCULOSKELETAL DISEASES, INJURIES OR DEFORMITIES THAT REQUIRES ASSEMBLING, FITTING, ADJUSTING AND SERVICING, THE SERVICES MUST BE PERFORMED BY A DULY LICENSED ORTHOTIST.

2. Synergy Orthopedics
RE: BOC certified employee

The Board, reviewed a letter from Synergy Orthopedic written on behalf of a BOC certified pedorthist employee regarding requirement of licensure in New Jersey.

THE BOARD, UPON THE MOTION MADE BY MILDRED E. CARLASCIO AND SECONDED BY LOUIS J. HABERMAN, DIRECTED THAT A LETTER BE SENT TO SYNERGY ORTHOPEDIC, STATING THAT PURSUANT TO N.J.S.A. 45:12-B-18(J) THIS SUBSECTION SHALL NOT PREVENT ANY CERTIFIED PEDORTHIST FROM APPLYING FOR AND OBTAINING A LICENSE LIMITING THAT PERSON'S PRACTICE OF ORTHOTICS AND PROSTHETICS TO THE ANKLE AND BELOW, AS LONG AS HE/SHE IS CERTIFIED BY ABC.

3. National Commission on Orthotics and Prosthetics Education (NCOPE)
RE: Amendments to NCOPE policy

THE BOARD CONSIDERED THIS MATERIAL AS INFORMATIONAL

4. Ulrich Froehlich, OrthoCare Solutions
RE: Off the shelf orthotics

The Board, upon motion made by Louis J. Haberman and seconded by Mildred E. Carlascio, determined that a letter be sent to Mr. Froehlich explaining and citing the regulations regarding off-the-shelf-products.

V. APPLICATIONS REVIEW

Upon the motion made by Louis J. Haberman and seconded by Mildred E. Carlascio, the Board approved the following applications for licensure.

1. Orthotists Assistant

Arthur Kitchen

ID # 087-72-1431

VI. IMO Michael G. Moschella, CPO/LPO
Lic # 45PO00013100
IMO Paul Duffy, LPO
Lic # 45PO00003900
Michael F. Martino, Esq.,

DAG Gezim Bajrami

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Mildred E. Carlascio - Recused due to business relationship with Mr. Moschella

Respondents through their attorney, Michael F. Martino, Esq., filed answers denying numerous allegations in the complaints and asserting separate defenses. Among the separate defenses was an allegation that an unnamed board member had an undisclosed conflict of interest.

Prior to the Board meeting, Board members Sr. Uustal and Mr. Haberman were questioned by the Board's counsel and Robert Campanelli, the Division Ethics Officer, to determine whether these Board members were aware of any circumstance that would warrant the member's recusal. Mr. Haberman disclosed that he practices in a health care facility where Respondents recently also practice. Based on the discussion with Mr. Campanelli, it was determined that Mr. Haberman is to recuse himself from participation in the matter. Mr. Campanelli, noting that administrative complaints and answers had been filed, advised Mr. Haberman that he could participate in the vote to transfer these matters to the Office of Administrative Law (OAL) for hearings as contested cases.

Mr. Campanelli's determination and the basis for the recusal was announced at the Board meeting.

Given that Ms. Carlascio is recused, and only two Board members are available, on the advice of the Ethics Officer and the Board's counsel, the Board invoked the rule of necessity, allowing Dr. Uustal and Mr. Haberman to vote to refer these matters to the OAL for adjudication.

UPON REVIEW OF THE ADMINISTRATIVE COMPLAINTS AGAINST MICHAEL MOSCHELLA AND PAUL DUFFY AND THE ANSWERS, WHICH DENIED THE ALLEGATIONS OF PARAGRAPHS 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, AND 25 OF THE RESPECTIVE COMPLAINT AND ASSERTED SEPARATE DEFENSES, AND BASED ON THE ADVICE OF THE ETHIC OFFICER, THE BOARD DETERMINED THESE MATTERS TO BE CONTESTED AND UPON A MOTION MADE BY HEIKKI UUSTAL AND SECONDED BY LOUIS J. HABERMAN VOTED TO REFER THESE CONTESTED MATTERS TO THE OAL FOR HEARINGS IN ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURE ACT.

VII. IMO Jason Kurilko/Unlicensed Fitter

The Board reviewed a medical malpractice report regarding an unlicensed practitioner, Jason Kurilko.

Upon review of the report regarding Jason Kurilko, the Board, upon the motion made by Louis J. Haberman and seconded by Mildred E. Carlascio, determined that a letter of advice be sent to Jason Kurilko advising him of the regulations governing the practice of orthotics in New Jersey and to invite him to apply for licensure.

VIII. ADJOURNMENT

At 12.50 P.M., the Board, upon a motion made by Louis J. Haberman and seconded by Mildred E. Carlascio, voted to adjourn the Public Session and moved to the Executive Session for advice of counsel and review of open matters (investigations and deliberations). When and if action is taken, it will be reported in Public Session.

The meeting was adjourned at 1:40 PM.

Respectfully submitted,

Laura L. Anderson
Executive Director